OFFICIAL POLICE GARAGE ASSOCIATION OF LOS ANGELES
801 South Figueroa Street, Suite 1050 Los Angeles, CA 90017
(213) 741-1500 X525 www.opgla.com

March 21, 2018

Honorable Reginald Byron Jones-Sawyer, Sr.
State Capitol
P.O. Box 942849
Sacramento, CA 95814

Re: AB 2876 (Jones-Sawyer) Oppose

Dear Assembly Jones-Sawyer,

On behalf of the 19 private companies that comprise the Official Police Garages of Los Angeles (OPGLA), I write in strong opposition to your AB 2876 regarding the removal and impounding of vehicles.

Tows and impounds under *Vehicle Code* §22650 are currently subject to the due process requirements of the 4th Amendment of the United States Constitution (applied to the States through the 14th Amendment). The proposed amendment set forth in AB 2876 is unnecessary and will result in unintended consequences. The regulation of parking on public streets and highways is a legitimate power of local governmental agencies. *Pipoly v. Benson* (1942) 20 Cal.2d 366, 372. Under certain circumstances local government agencies have the right and duty to remove unattended vehicles from public streets to places of storage. Existing law set forth in *Vehicle Code* §§22650 through 22856 provides an essential tool to efficiently and effectively promote public safety by removing from public streets unattended vehicles that create a hazard, impede the free flow of traffic, and/or might be a target of vandalism or theft. These statutes also aid law enforcement in keeping dangerous drivers off the road.

AB 2876 would add a requirement to *Vehicle Code* §22650 compelling law enforcement to comply with the 4th Amendment and the Community Caretaking Doctrine, when determining whether the impoundment of an unattended vehicle is warranted. However, such a statement is unnecessary and unhelpful. Law enforcement is already required to conduct searches and seizures in accordance with constitutional requirements, and otherwise comply with federal and state law. Furthermore, case law has already established clarity with respect to how law enforcement should apply the Community Caretaking Doctrine when determining whether to impound a vehicle.

Current laws regarding impoundment have been proven an effective measure to efficiently and effectively promote public safety by removing from public streets unattended vehicles that create a hazard, impede the free flow of traffic, and/or might be a target of vandalism of theft. The current impoundment laws are also an effective measure to discourage drivers with suspended or revoked licenses and those who are unlicensed from driving and to deter vehicle owners from irresponsibly lending their vehicle to an unlicensed driver.

AB 2876 will have an adverse impact on traffic safety throughout the state. The amendment would impose requirements beyond what is required by either the 4th Amendment or the California Constitution. This bill leaves unanswered many important policy questions regarding impoundment that go beyond mere compliance with existing law and would make it harder for local governmental agencies to enforce existing laws that preserve public safety.

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- Law enforcement agencies will be confronted with determining which impoundments are "necessary to achieve community caretaking need."

- The phrase "necessary to achieve community caretaking need" could be interpreted to restrict most circumstances in which a vehicle may be impounded. This would place an unreasonable restriction on the ability of local governmental agencies to impound vehicles.

- Such restrictions on the ability to impound vehicles can lead to liability since local governmental agencies can be sued if there is no impound and the vehicle is found to be the cause of a hazardous condition or is subsequently driven and causes damage.

Current laws already alleviate much, if not all, of the need for the relief sought by this proposed legislation. It is well established that tows and impounds under *Vehicle Code* §22650 are, and have always been, strictly subject to the due process requirements of the 4th Amendment, whose central purpose "is to safeguard the privacy and security of individuals against arbitrary invasions by government officials (Citations Omitted)." *South Dakota v. Opperman* (1976) 428 U.S. 364, 377. The Fourth Amendment protects against warrantless searches and seizures.

- "The fundamental requirements of procedural due process are notice and an opportunity to be heard before the government may deprive a person of a protected liberty or property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976)." *Alviso v. Sonoma County Sheriff's Dept.* (2010) 186 Cal.App.4th 198, 209.

"The police impoundment of a motor vehicle must be reasonably required; the right does not automatically or necessarily result from the driver's arrest. It arises from some legal or factual necessity for its removal by the police, e.g., the arrest must result in the car being 'unattended' (see *Veh. Code*, § 22650; (Citation Omitted)) . . . . Above all, the impoundment must be in good faith for a recognized and proper purpose; it may not be used as a device to circumvent Fourth Amendment rights." *People v. Andrews* (1970) 6 Cal.App.3d 428, 437.

- A decision to impound a vehicle must be based on a valid community caretaking or public safety function, not simply on statutory authorization. *People v. Williams* (2006) 145 Cal.App.4th 756, 761. "Whether 'impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft." *Id.*

- The "Community Caretaking Doctrine" is an established and well delineated exception to the requirement that searches and seizures must be conducted pursuant to prior approval by a court.

    - The community caretaking doctrine allows the local governmental agency to impound only where necessary to ensure that the location or operation of vehicles does not jeopardize the public safety. The impound of a vehicle under the Community Caretaking Doctrine may only occur if the vehicle presents a traffic hazard or public safety concern and the driver cannot lawfully operate the vehicle to move it to a safe location.

    - The Community Caretaking Doctrine recognizes law enforcement officers perform many community functions apart from investigating crime and officers are "expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety." *U.S. v. Rodriguez-Morales* (1st Cir. 1991) 929 F.2d 780, 784-785.

    - "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." (*South Dakota v. Opperman* (1976) 428 U.S. 364, 369 [49 L. Ed. 2d 1000, 96 S. Ct. 3092].)." *People v. Quick* (2016) 5 Cal.App.5th 1006, 1010.

- "In the role of 'community caretaker,' peace officers may impound vehicles that jeopardize public safety and the efficient movement of vehicular traffic. (Citations Omitted). Factors relevant to whether a particular impoundment is justified include the location of the vehicle and the likelihood it will create a hazard to other drivers or be a target of vandalism or theft." *Halajian v. D & B Towing* (2012) 209 Cal.App.4th 1, 15.

- Local government agencies may impound a vehicle being driven by an unlicensed driver under *Vehicle Code* §22651, where the impound is supported by a "community caretaking function," and not simply to deprive the driver of use of the vehicle such as when moving the vehicle will facilitate the free flow of traffic. *People v. Torres* (2010) 188 Cal.App.4th 775, 787. Removal and storage of the vehicle is warranted because a person who lacks a valid driver's license may not lawfully operate the vehicle so as to move it away from a public location.

- As the Ninth Circuit has explained: "An impoundment may be proper under the community caretaking doctrine if the driver's violation of a vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is necessary to remove the vehicle from an exposed or public location. [Citations.] The violation of a traffic regulation justifies impoundment of a vehicle if the driver is unable to remove the vehicle from a public location without continuing its illegal operation." *Miranda v. City of Cornelius* (9th Cir. 2005) 429 F.3d 858, 865.)

Vehicle Code §22650 et seq., already provides necessary restrictions to the circumstances under which unattended vehicles may be towed, sets the fees and fines that can be charged, and, importantly, establishes due process requirements for notifying registered owners and interested parties that a vehicle has been towed and impounded.

- Section 22650 provides that is unlawful to remove any unattended vehicle from a highway to a garage or to any other place, except as provided by state law.

- Section 22651 specifies the limited circumstances under which a vehicle may be removed from public streets or highways by a local governmental agency enforcing parking restrictions.

  - Other situations permitting removal and storage of vehicles are contained in *Vehicle Code* §§22651.5 through 22659.

- Section 22852 provides protection to registered owners and interested parties from having their vehicles towed and stored improperly by requiring an expeditious post-storage impound hearing to provide them with an opportunity for a "post-storage hearing" to determine the validity of the impoundment. The hearing procedure provided by *Vehicle Code* §22852, adequately reconciles the competing interests of the parties: the registered owner's interest in avoiding the cost and disruption entailed by impoundment of one's vehicle; the risk of erroneous deprivation given the straightforward nature of most of the determinant factors; and the governmental interest in efficiently and effectively promoting public safety by removing from public streets unattended vehicles that create a hazard, impede the free flow of traffic, and/or might be a target of vandalism or theft, as well as keeping dangerous drivers off the road.

  - "The Due Process Clause does not require pre-deprivation notice and a hearing before the towing and impoundment from public streets of vehicles for parking or traffic violations. (Citations Omitted) Furthermore, *Vehicle Code* sections 22650 and 22852 . . . which provide for a prompt postdeprivation hearing, comply with procedural due process standards. (Citations Omitted)." *Waters v. Hollywood Tow Serv.* (C.D.Cal. July 27, 2010, No. CV 07-7568 CAS (AJW)) 2010 U.S.Dist.LEXIS 93091, at *52.

- The car owner's right to an administrative hearing [*Veh. Code* § 22852] coupled with the impounding agency's statutory burden of proving the ground for impoundment [*Veh. Code* § 22650 (a)] are sufficient to comply with due process. *Thompson v. City of Petaluma* (2014) 231 Cal.App.4th 101, 107.

Vehicle Code §22650 does not broadly sanction the summary removal of a vehicle for any parking violation. Rather, seizure is only authorized when an illegally parked vehicle creates a hazard or constitutes an obstruction to traffic. *Vehicle Code* §§22651(a), (b). Even when a vehicle does constitute such a hazard, removal is authorized only when it is impractical to move the vehicle to a safe location. *Vehicle Code* §§22651(d), (e). *Kash Enterprises, Inc. v. Los Angeles* (1977) 19 Cal.3d 294, 311-312. "California courts have never permitted police to impound vehicles at will and, in fact, regularly scrutinize even statutorily-authorized vehicle seizures. See, e.g., *People v. Aguilar*, 279 Cal. Rptr. 246, 249 (Cal. Ct. App. 1991) (illegal to impound a vehicle for the purpose of conducting an investigatory search); *People v. Landa*, 106 Cal. Rptr. 329, 331-32 (Cal. Ct. App. 1973) (even where § 22651 authorizes police to impound a vehicle after arresting the driver, it is improper to do so when circumstances do not necessitate police custody of the vehicle); *People v. Nagel*, 95 Cal. Rptr. 129, 131-33 (Cal. Ct. App. 1971) (same); *People v. Andrews*, 85 Cal. Rptr. 908, 914 (Cal. Ct. App.) ("the impoundment must be in good faith for a recognized and proper purpose; it may not be used as a device to circumvent Fourth Amendment rights"), cert. denied, 400 U.S. 908 (1970)." *Segura v. Block* (9th Cir. Oct. 28, 1993, No. 91-55828) 1993 U.S. App. LEXIS 28828, at *6-7.

Given the existing laws already contain due process requirements and provides many reasonable exceptions where a registered owner may retrieve a vehicle from impoundment, this bill is unnecessary. For the reasons stated, OPGLA is strongly opposed to AB 2876. Thank you for considering our views on this legislation.

Sincerely,

Eric W. Rose
Executive Director

Cc: Honorable Mitchell Englander, Chair, Los Angeles City Council Public Safety Committee
Honorable Mike Bonin, Chair, Los Angeles City Council Transportation Committee
Charlie Beck, Los Angeles Police Chief
Richard Tefank, Executive Director Los Angeles Police Commission
Seleta Reynolds, General Manager, Los Angeles Department of Transportation
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